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Supreme Court of the United States

OCTOBER TERM, 1952

No. 179

SOUTH BUFFALO RAILWAY COMPANY,
Appellant,

v.

GERTRUDE SLOAN AHERN and NEW YORK STATE WORKMEN'S COMPENSATION BOARD,
Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR APPELLEE NEW YORK STATE WORKMEN'S COMPENSATION BOARD

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Opinions Below

The opinion of the Court of Appeals of the State of New York (R. 98) has been reported in 303 N. Y. 545 (1952).

The memorandum decision of the Appellate Division of the Supreme Court of the State of New York in and for the Third Judicial Department (R. 95), has been reported in 277 App. Div. 1067 (1950).

Jurisdiction

Probable jurisdiction was noted in the instant case on October 13, 1952.

Statutes Involved

The appellant challenges the validity of the application to this case of Section 113 of the Workmen's Compensation Law of the State of New York (New York Laws of 1913, c. 816; as amended and re-enacted by New York Laws of 1914, c. 41 and Laws of 1922, c. 615), alleging that such application is repugnant to the provisions of Section 8 of Article I and Clause 2 of Article VI of the Constitution of the United States and of the provisions of the Federal Employers' Liability Act (Act of Apr. 22, 1908, c. 149, 35 Stat. 65; as amended by the Act of Aug. 11, 1939, c. 685, 53 Stat. 1404; 45 U. S. C. §§ 51, *et seq.* [Specification of Errors: R. 8, 9]). Section 113, which has been applied to this case, reads as follows:

> "§ 113. INTERSTATE COMMERCE. The provisions of this chapter shall apply to employers and employees engaged in intrastate, and also interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, provided that awards according to the provisions of this chapter may be made by the board in respect of injuries subject to the admiralty or other federal laws in case the claimant, the employer and the insurance carrier waive their admiralty or interstate commerce rights and remedies, and the state insurance fund or other insurance carrier may assume liability for the payment of such awards under this chapter."

Statement

This appeal is from an order and judgment of the Court of Appeals of the State of New York, which affirmed an order of the Appellate Division of the Supreme Court in and for the Third Judicial Department (R. 97, 98).

The Appellate Division unanimously affirmed a decision, made by the New York State Workmen's Compensation Board pursuant to the provisions of the Workmen's Compensation Law of that State, which denied the appellant's application for a review or rehearing of a referee's decision allowing disability compensation to the widow of Thomas J. Ahern, the deceased employee, for a period of disability preceding and extending to the date of Ahern's death. The referee continued the case for the preparation of a death claim by the widow of the deceased (R. 7, 8, 9, 21, 22, 88-91).

Prior to Ahern's death on January 3, 1949, and following the filing of a claim by him, the appellant paid workmen's compensation to him for 4½ years, from the date of his accident on July 1, 1944 until December 20, 1948, which was 2 weeks before he died, representing a sum of $5,528.66 (R. 100). This compensation was paid regularly in bi-weekly payments as a result of 3 separate decisions and awards made by the Workmen's Compensation Board early in this 4½ year period (R. 13, 19, 20, 21).

About the date of his death, a further bi-weekly payment was due and payable to Ahern, but evidently because of his death it was not paid. The record suggests that a "check" had been forwarded by the appellant but that the deceased had not received it before he expired.

> "Widow: That's right; check came and he didn't get it" (R. 90).

On January 18, 1949, at the first hearing before a referee following the death of Ahern and when a death claim was indicated, the appellant for the first time about 4½ years after the accident, challenged the jurisdiction of the Board and offered proof on the subject (R. 88-91).

The referee overruled the application and granted an award to December 20, 1948, covering the period of disability which already had been paid by the appellant and which had not been the subject of a formal award. He also awarded disability compensation for 2 weeks amounting to $56 for the bi-weekly period from December 20, 1948 to the date of death on January 3, 1949, which had been due at the time of death but had not been paid (R. 21, 22, 90).

As the appellant, at no time, has requested, sought or demanded and does not seek the recovery of the $5,528.66 which it has paid (R. 101), the only monetary amount involved on appeal in this case is $56 awarded as disability compensation for the period of 2 weeks prior to Ahern's death.

The deceased was employed as a switchman at Lackawanna, New York, by the appellant (R. 29, 31). On July 1, 1944, while he was engaged in the regular course of his employment, throwing a switch, and by reason of the exercise of unusual strain and effort, he suffered accidental injuries in the nature of an acute coronary occlusion, with resultant disability (R. 4, 99).

The deceased filed a claim for workmen's compensation benefits on January 15, 1945, with the Workmen's Compensation Board of New York State (R. 28-30). On February 1, 1945, the appellant filed with the Board an employer's first report of injury and a notice of controversy (R. 30-33). It controverted the claim solely on the issues of accident and causal relation (R. 33). Extensive testimony and proof on these issues were adduced before the referee at several hearings which were held between March 6, 1945 and July 3, 1945 (R. 35-83).

On September 24, 1945, the referee rendered a decision wherein he found in favor of the deceased on the issues of accident and causal relation and accordingly, allowed an award of compensation in the sum of $1,353.33 for disability covering the period of 48-2/6 weeks from July 1, 1944 to June 5, 1945 (R. 12, 13).

On October 11, 1945, the appellant filed an application for review by the Workmen's Compensation Board of the referee's decision of September 24, 1945 (R. 24). On November 15, 1945, the Board affirmed the referee's decision and denied the application for review (R. 16-18).

No appeal to the appellate courts of the State was taken by the appellant from the award or the decisions of the referee and of the Board.

A second award was made in favor of the deceased on January 10, 1946 in the sum of $868, for a disability period of 31 weeks between June 5, 1945 and January 8, 1946 (R. 19, 20).

A third award was rendered in favor of the deceased on February 5, 1947 in the sum of $1,568 for a disability period of 56 weeks between January 8, 1946 and February 4, 1947. Payments were directed to be continued by the appellant until a C-8 (form of notice to the Board of cessation of payments) was filed (R. 20, 21).

In accordance with the order of the Board, the appellant not only paid the aforementioned 3 awards, but it continued to pay compensation to December 20, 1948 (R. 90). It served no notices of appeal to the appellate courts of the State from any of the aforementioned awards or decisions.

On January 3, 1949, Ahern died as a result of his heart condition (R. 89, 90). Approximately 2 weeks thereafter and on January 18, 1949, a hearing was held before the referee at which the widow of the deceased was requested

to file a death claim (R. 90, 91). The question arose as to the widow's right to an award for disability compensation for the unpaid 2-week period up to the time of the death (R. 90).

At this hearing the appellant for the first time notified the referee that it objected to the disability claim on the ground of jurisdiction and offered proof on the question. The appellant attempted to raise the same objection to any claim for death benefits (R. 88, 89), but the referee stated that there was no death claim before him. The referee proceeded to make the award now on appeal for disability compensation (R. 21, 22, 90). It was not until the appellant applied for review by the Board of the referee's decision and for leave to introduce additional proof on the jurisdictional question, that the issue of interstate commerce was asserted (R. 26, 27).

At the hearing of January 18, 1949 (R. 88-91), in its application to the Workmen's Compensation Board for review (R. 26, 27), in its brief in the Appellate Division and in the Court of Appeals, the appellant sought, and in its brief in this Court (Conclusion: applt's. br., p. 26) the appellant seeks, the right to submit "proof" before the Workmen's Compensation Board as to the jurisdiction of the Board over the subject matter. This procedural request to submit proof was made for the first time after voluntarily submitting to the jurisdiction of the Board for 4½ years and after paying compensation for the same period.

The issues on appeal primarily concern those provisions of Section 113 of the New York State Workmen's Compensation Law which were added to that Section in the year 1922 (New York Laws of 1922, c. 615), reading as follows:

> "* * * provided that awards according to the provisions of this chapter may be made by the board in respect of injuries subject to the admiralty or other fed-

eral laws in case the claimant, the employ[illegible] and the insurance carrier waive their admiralty or interstate commerce rights and remedies, and the state insurance fund or other insurance carrier may assume liability for the payment of such awards under this chapter."

Summary of Argument

I

The waiver by the appellant and by the deceased of their rights and remedies under the Federal Employers' Liability Act and the acceptance by them of the terms of the New York State Workmen's Compensation Law and their submission to the jurisdiction of the New York State Workmen's C[illegible]pensation Board constituted a fair and valid compromise agreement and release whereby the parties settled their dispute in substitution for the litigation permitted by the Federal Act.

The application of Section 113 of the New York State Workmen's Compensation Law in this case does not conflict with the Federal Employers' Liability Act and violates no provision of the Constitution of the United States.

II

The conduct and acts of the parties established a valid compromise agreement and release which fairly settled the dispute under the Federal Act and which permitted and justified the invoking and the application of the waiver provisions of Section 113 of the New York State Workmen's Compensation Law.

ARGUMENT

I

The waiver by the appellant and by the deceased of their rights and remedies under the Federal Employers' Liability Act and the acceptance by them of the terms of the New York State Workmen's Compensation Law and their submission to the jurisdiction of the New York State Workmen's Compensation Board constituted a fair and valid compromise agreement and release whereby the parties settled their dispute in substitution for the litigation permitted by the Federal Act.

The application of Section 113 of the New York State Workmen's Compensation Law in this case does not conflict with the Federal Employers' Liability Act and violates no provision of the Constitution of the United States.

The deceased employee, Thomas J. Ahern, suffered accidental injuries on July 1, 1944 in the regular course of his employment with the appellant. He was disabled thereafter until January 3, 1949, when he died apparently as a result of his injuries. He filed a claim under the provisions of the Workmen's Compensation Law of New York State, and the appellant filed the usual documents incidental to a proceeding under that Statute.

The appellant and Ahern voluntarily submitted to the jurisdiction of the New York State Workmen's Compensation Board. Both parties were represented by counsel. During the early proceedings on the claim before that Board, 7 hearings were held and 3 awards were made. The last award directed the continuance of the payment of disability compensation by the appellant.

No appeal to the appellate courts of the State of New York from the awards or decisions which had been rendered by the Board, was taken by either party.

The appellant paid compensation regularly to Ahern for 4½ years, amounting to the sum of $5,528.66.

It was not until about 2 weeks after Ahern's death, at the 8th hearing on the disability claim held on January 18, 1949, and long after the rights and remedies of the deceased and his dependents had been barred by the 3-year Statute of Limitations applicable to causes authorized by the provisions of the Federal Employers' Liability Act, that the appellant, for the first time, interposed the objection t' at the Workmen's Compensation Board was without jurisdiction and offered to introduce proof with respect thereto.

This application was denied and, as the appellant had paid compensation regularly until December 20, 1948, and apparently had forwarded a "check" for the bi-weekly disability period terminating about the date of the death of Ahern on January 3, 1949, the referee by means of a formal award confirmed the payments to December 20, 1948, and granted the 2-weeks' disability compensation to January 3, 1949, which is now challenged on appeal.

In the light of the facts revealed by the record, and particularly the facts and circumstances outlined above, the Court of Appeals of the State of New York held that the acts and conduct of the parties cogently disclosed their intention and agreement to compromise and to settle the dispute through the Workmen's Compensation Board of New York State in substitution for the litigation permitted by the Federal Employers' Liability Act and that Section 113 of the Workmen's Compensation Law of that State validly was applied.

Referring to the case of *Heagney* v. *Brooklyn Eastern District Terminal*, 190 F. (2d) 976 (1951), cert. den. 342 U. S. 920 (1952), which will be discussed hereafter in more detail and wherein the payment of compensation pursuant to the New York State Workmen's Compensa-

tion Law extended over a period of 2 years instead of a period of 4½ years as in the case at bar, the Court of Appeals succinctly outlined the applicable legal philosophy and principles.

> "* * * In the *Heagney* case (*supra*), it was said at page 978: 'If there is ever to be any settlement of legal claims we feel that it must be in a case such as this where a claimant before an administrative board is adequately represented by counsel over a long period, during which the rights, potential and actual, of the client are perfectly obvious to anyone with the slightest legal training, and where there is no suggestion of fraud or concealment from the lawyer on the part of the employer'.
>
> "That language is equally applicable here. When the acts of the decedent and the employer are viewed in the light of what reasonably intelligent persons would naturally have intended by them, we think the inference, fairly to be drawn, is that both the employer and employee intended that the board's determinations be taken 'in substitution of the litigation permitted by the Federal Acts'. That being true, we can conceive of no sound reason why the employer should be permitted to urge his Federal rights at this late date" (R. 114) (303 N. Y. 545, 563, 564).

At another point in the opinion, the Court of Appeals, adopting, in part, the words employed by Judge Cardozo, in an early opinion of the same Court, said:

> "Here, it is clear, that we must construe the addition to section 113, in the words of Judge Cardozo, 'In the setting of the context', and it is equally clear that there is present in the facts already detailed 'a concurrent evidence of intention having the force of an agreement to forego one set of remedies and abide by another', and that such intention has been announced by all who must participate in such an agreement." (R. 104, 105) (303 N. Y. 545, 554).

There appears to be no doubt under the Federal decisions that an employer and an employee subject to the provisions of the Federal Employers' Liability Act may dispose of the claim of the employee against his employer, without contravening the Act, by entering into a compromise of the dispute and by settling it without litigation.

Callen v. *Pennsylvania R. Co.*, 332 U. S. 625, 631 (1948);
Boyd v. *Grand Trunk Western R. Co.*, 338 U. S. 263, 266 (1949);
Heagney v. *Brooklyn Eastern District Terminal*, 190 F. (2d) 976 (1951), cert. den. 342 U. S. 920 (1952).

This doctrine is admitted by the appellant (applt's. br., p. 10) and the discussion of it in the opinion of the Court of Appeals bears repetition:

"The Federal Employers' Liability Act (Act, § 5; U. S. Code, Tit. 45, § 55), makes void any 'contract, rule, regulation, or device whatsoever' to exempt a carrier from liability. Notwithstanding that provision, the right of the employee to dispose of a claim he may have against his employer by entering into a compromise of his dispute is a right of contract which Congress did not intend to impugn. The employee may adjust 'his own affairs in his own way after a cause of action has arisen in his favor, so long as such adjustment is fair and violates neither public policy nor some proper and enforceable statutory provision'. (*Anderson* v. *Oregon Short Line R. Co.*, 47 Utah 614, 620.) That section forbids only contracts before injury exempting the master from liability and has no application to a contract of settlement. (*Ballenger* v. *Southern Ry. Co.*, 106 S. C. 200, 203.) Thus, the Supreme Court of the United States has

held that that provision does not operate to prevent an otherwise valid release of a claim by an individual engaged in interstate commerce since 'a release is not a device to exempt from liability but is a means of compromising a claimed liability and to that extent recognizing its possibility'. (*Callen* v. *Pennsylvania R. Co.*, 332 U. S. 625, 631.) In the more recent case of *Boyd* v. *Grand Trunk W. R. Co.* (338 U. S. 263, 266), an agreement which sought to limit the venue of an action that might thereafter be brought by an employee under the Federal Employers' Liability Act was held invalid as contravening the act, but the court reaffirmed the ruling in the *Callen* case characterizing the agreement therein as a 'full compromise enabling the parties to settle their dispute without litigation, which * * * did not contravene the Act'." (R. 102, 103) (303 N. Y. 545, 551, 552)

Judge Fuld, in his dissenting opinion in the Court of Appeals, likewise affirmed the principle (R. 118). His dissent largely concerned factual considerations and the application thereto of holdings or rulings in early decisions of that Court.

As the Court of Appeals further pointed out (R. 106), there is nothing contained in the Constitution of the United States which prohibits, nor has this Court held, that, after an accident, all interested parties may not dispose of their controversy as they themselves see fit, provided that the means whereby such dispute is settled or adjusted does not violate public policy. If all parties agree that they will be subject to the workmen's compensation statute of a state, rather than resort to litigation, and the state has permitted such procedure, no valid objection to such an arrangement is disclosed. If the parties agree on a sum of money to be paid in discharge of the claim for personal injuries, such agreement, if there has been no over-reach-

ing or fraud, does not violate any constitutional provision, Federal legislation or announced public policy.

Neither is there any sound reason why the parties may not designate an impartial third person or group of persons to determine the amount to be paid in extinguishment of the claim. The Court of Appeals went on to say that to the Court's mind that is all that Section 113 of the Workmen's Compensation Law purported to accomplish. It was the Court's conclusion that Section 113 did not conflict with the fundamental law of the land or any Federal law or court holding.

As to the validity of the application of Section 113 of the Workmen's Compensation Law to the case at bar, the Court of Appeals also observed:

> "No constitutional provision, Federal statute or Federal court holding has been called to our attention, which prohibits a State Legislature from giving effect to the lawful words and/or acts of the parties. The Legislature of the State of New York has said, through section 113 of the Workmen's Compensation Law, that when the words and/or acts of the parties clearly establish that the parties desire to have the State Compensation Board award compensation rather than be compelled to litigate the differences, the board may award compensation. We do not think that any fault may be found with such a statute" (R. 108) (303 N. Y. 545, 558).

The appellant has not shown that the Federal Employers' Liability Act was intended to invade the field occupied by the application of the waiver provisions of Section 113 in this case. In conferring upon Congress the regulation of commerce, it was never intended to cut the states off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country

(*Sherlock* v. *Alling*, 93 U. S. 99, 103 [1876]). The mere fact of employment does not bring the employees of a railroad within the Federal Employers' Liability Act (*New York, New Haven & Hartford Railroad Company* v. *Bezue*, 284 U. S. 415, 419 [1932]).

There is no room for contradiction that the enactment of the waiver provisions of Section 113 in the light of the purposes which they were intended to fulfill, was a reasonable exercise of the police power of the State.

It is difficult to perceive how the application of Section 113, under the permissive, voluntary and elective terms thereof, will interfere with or encroach upon the uniform operation of the Federal Employers' Liability Act, and it is submitted that the appellant's concern in this connection is wholly unwarranted.

As the instant case illustrates, the right to appeal to the appellate courts of the State and to this Court are preserved in the event of the invasion of any field exclusively reserved by Federal laws or by the Constitution of the United States, or if, as the appellant contends, the agencies of the State endeavored to circumvent such laws or Constitution. There are few statutes which are not capable of abuse in application. This Court will not assume in advance that they will be misapplied (*Allen-Bradley Local* v. *Board*, 315 U. S. 740, 746 [1942]; *United States* v. *Petrillo*, 332 U. S. 1, 11-12 [1947]; *Niemotko* v. *Maryland*, 340 U. S. 268, 289 [1951]; *Fox* v. *Washington*, 236 U. S. 273, 277 [1915]).

Aside from repeated bland assertions by the appellant that the uniformity of the application of the Federal Employers' Liability Act will be impaired, any substantial demonstration thereof is wanting. The dearth of cases which have been the subject of appeal in New York State on the subject matter of waiver under Section 113 of the Workmen's Compensation Law, a fact deserving mention

by the Court of Appeals in its opinions (R. 104, 117), strongly poses a refutation and negation of the appellant's contention that the application of the State statute would interfere with the uniform enforcement of the Federal Act.

Thus, the suggestions in the appellant's argument plainly are unjustified that the application of Section 113 compels or requires the submission of the appellant to State jurisdiction in respect of a subject matter exclusively within the jurisdiction of the Federal Employers' Liability Act and that there was an absence of jurisdictional subject matter when the Workmen's Compensation Board applied the waiver provisions of Section 113.

The following excerpt from the opinion of the Court of Appeals again reflects the unsubstantial nature of these suggestions:

> "* * * To our mind, the language of the section and that of the legislative committee which recommended its enactment plainly indicates that is a *permissive* statute intended to empower the board to make awards of compensation if all of the parties elect to settle their dispute in that fashion, and forego their Federal rights and remedies. It is not to be imposed upon them in the absence of a joint waiver or agreement evidencing an intention to be bound by its terms. In thus construing that section, we have been guided by the familiar principle of our jurisprudence that the courts are reluctant, and it is only as a last resort, that they will strike down a solemn legislative enactment on the ground that it is unconstitutional * * *" (R. 105) (303 N. Y. 545, 555).

The legislative committee mentioned in the excerpt was the Joint Legislative Committee of the New York State Legislature which in a report (N. Y. Legis. Doc., 1922, No 55) recommended the enactment of the addition to Section 113 of the Workmen's Compensation Law providing for

waiver which is involved on this appeal. The significant language of that report reads:

> " 'The proposed amendment will permit those who choose to elect to accept the provisions of our law to so elect, and the one to pay [and] the other to accept compensation thereunder' " (R. 105; applt's. br., p. 28).

The decision of the United States Court of Appeals for the Second Circuit in the recent case of *Heagney* v. *Brooklyn Eastern District Terminal*, 190 F. (2d) 976 (1951), cert. den. 342 U. S. 920 (1952), *supra*, constitutes a complete answer to essentially all of the contentions of the appellant.

The United States Court of Appeals in that case considered Section 113 of the New York State Workmen's Compensation Law and concluded that the Section was valid and that the agreement of the parties to abide by the awards of the State Board, plus payment of a substantial number of such awards, constituted a release or compromise of the parties' rights under the Federal Act. The employer in that case had paid compensation under the New York Statute for about only two years. In the present case, such compensation was paid for 4½ years and for 1½ years after the expiration of the Statute of Limitations applicable to causes of action permitted by the Federal Act. The only alleged basis of distinction between the two cases which the appellant could discover and urge consisted of the assertion that there was an express agreement to pay and to accept compensation in the *Heagney* case whereas the agreement in the case at bar was held to be an implied agreement by the Court of Appeals (applt's. br., p. 24). Such distinction, it is submitted, is without legal substance.

The appellant's reliance on the case of *Erie Railroad Co.* v. *Winfield*, 244 U. S. 170 (1917) and on the New Jersey

Statute (applt's. br., pp. 16-19), which was construed by the Court, is ill founded and the decision, in fact, as the Court of Appeals' opinion establishes, lends support to the contentions of the appellee herein.

"* * * The court held that it was beyond the power of a State to interfere with the operation of the Federal Employers' Liability Act 'by putting the carriers and their employees to an election between its provisions and those of a state statute or by imputing such an election to them by means of a statutory *presumption*'. (Emphasis supplied.)

"It will be seen that the court did not declare that it is beyond the power of a State to enact a statute conferring upon the employer, employee and insurance carrier the privilege of compromising their dispute by submitting it to the board. Moreover, the language of the Supreme Court in the *Erie* case (*supra*) above quoted, indicates that the court would have reached a different result had the parties *actually agreed* to forego their Federal rights and remedies.

"Section 113 of the New York Workmen's Compensation Law, unlike the New Jersey statute, does not require the parties to choose between the Federal act and the State Workmen's Compensation Law, nor does it impute such an election to them by means of a presumption as did the New Jersey statute. Section 113 merely offers the parties a means whereby they may compromise their dispute, if they are *mutually desirous* of so doing" (R. 108) (303 N. Y. 545, 557).

The conduct and acts of the appellant in this case portray a comparable pattern to the ones which motivated the following comments of the Court in the respective cases cited below:

In *Booth Fisheries Company* v. *Industrial Commission of Wisconsin*, 271 U. S. 208, 211 (1926), the Court held:

> "* * * the employer in this case having elected to accept the provisions of the law, and such benefits and immunities as it gives, may not escape its burdens by asserting that it is unconstitutional. The election is a waiver and estops such complaint. * * *"

In *Davis* v. *Wakelee*, 156 U. S. 680, 691 (1895), the Court said:

> "It is contrary to the first principles of justice that a man should obtain an advantage over his adversary by asserting and relying upon the validity of a judgment against himself, and in a subsequent proceeding upon such judgment, claim that it was rendered without personal service upon him. * * *"

In *Burgess* v. *Nail*, 103 F. (2d) 37, 44 (1939), the Court stated:

> "One who accepts and retains the benefits of a void judgment is estopped to assert its invalidity. The principle applies to cases where the invalidity arises from want of jurisdiction of the person or over subject matter of the action."

II

The conduct and acts of the parties established a valid compromise agreement and release which fairly settled the dispute under the Federal Act and which permitted and justified the invoking and the application of the waiver provisions of Section 113 of the New York State Workmen's Compensation Law.

Having considered the facts and circumstances disclosed by the proof in the record, the Court of Appeals of New York State unequivocally held that the conduct and acts

of the parties for several years, subsequent to the Workmen's Compensation Board's ruling on the questions of accident and causal relation and its direction that compensation be paid, established as conclusively as the evidence in the *Heagney* case, *supra*, that it was the mutual desire of the parties that the Board, acting as an impartial third person, should determine the amount to be paid in discharge of the claim by the deceased (R. 112).

The Court discussed in detail the events and circumstantial features evincing the intention of the parties to enter into a compromise agreement whereby the dispute under the Federal Act might be settled without litigation. The Court stressed such factors to the effect that there could be no suggestion that the parties were not fully aware of their Federal rights and remedies, that they were represented before the Board by competent counsel and that the appellant and the deceased were chargeable with the knowledge that the Board was powerless to require the payment of compensation unless they had waived their Federal rights and remedies (R. 112-114).

The Court related many other significant indicia establishing the compromise agreement and waiver, including the appellant's failure to appeal the earlier awards (§ 23 of the Workmen's Compensation Law decrees awards and decisions to be final unless reversed or modified on appeal), the continuance of the payment of compensation after the Statute of Limitations dictated by the Federal Employers' Liability Act had run against the claim of the deceased and his dependents, that by reason of the running of the Statute of Limitations the deceased and his dependents lost their rights and remedies under the Federal Act, that the appellant had a duty to speak and by failing to do so the deceased was led to believe that the appellant was equally agreeable that the Board should act and that the appellant's silence would be construed as an acceptance of the deceased's offer to compromise, that there

was no contention or implication in the evidence of overreaching or fraud, that the waiver provisions of Section 113 were permissive and voluntary and imposed no restraint on the freedom of action of the parties, that the appellant paid compensation for 4½ years, choosing not to assert that the Board lacked jurisdiction (R. 112-115), and that the appellant had not sought the return of any money which had been paid (R. 101).

The following language of the Court aptly summarizes the inference to be drawn from the conduct and acts of the parties:

> "* * * When the acts of the decedent and the employer are viewed in the light of what reasonably intelligent persons would naturally have intended by them, we think the inference, fairly to be drawn, is that both the employer and employee intended that the board's determinations be taken 'in substitution of the litigation permitted by the Federal Acts'. * * *" (R. 114) (303 N. Y. 545, 564).

The Court of Appeals in its opinion set at rest the vexing questions relating to so-called "interlocutory" and "final" awards, which had arisen by virtue of early decisions of the State courts involving accidents and the status of the law existing before the enactment in the year 1922 of the waiver provisions added to Section 113 of the Workmen's Compensation Law. The Court explained that the addition to Section 113 was not a codification of the earlier Court expressions (R. 105).

The instant case was the first case since those decisions, which required an extensive construction of the provisions added to Section 113 (R. 104).

Dismissing the contention that a so-called "final award" was a necessary ingredient of a compromise and waiver, the Court of Appeals quoted the following significant

expressions in the *Heagney* case, *supra*, found at page 979 of the report of that case:

> "* * * What we must look for, therefore, is a fair compromise whereby the parties settle their dispute in substitution for the litigation permitted by the Federal Acts; there is no mystic significance to be accorded a 'satisfaction' upon some assumed 'final award'. When a state procedure accomplishes just that by agreement of all concerned, it should therefore be at least as valid as a formal release secured on payment of a few hundred dollars. And certainly no invidious distinction should be made so that only a purely temporary injury can be settled in this way, and that any permanent injury is excluded from settlement just because the state process requires continuing payments for the good of the injured employee" (R. 111) (303 N. Y. 545, 560).

It appears in order at this point to observe that the dissenting opinion in the *Heagney* case, *supra*, indicates that the viewpoint therein was influenced by the aforesaid early decisions of the courts of New York State. If the decision of the Court of Appeals in the instant case had been before the Federal Court at the time it considered the *Heagney* case, it reasonably can be assumed that the viewpoint of the dissenting Judge in that case, in a large measure, would have been in harmony with the majority of the Court (190 F. (2d) 976, 982, 983, 985).

The Court of Appeals interpreted the legislative intent implicit in the added provisions of Section 113 and construed that intent in its relation to the application of the waiver provisions therein with respect to both express waiver and implied waiver by conduct. The Court said in the latter connection:

> "* * * In the case now before us the employer which made its agreement by conduct rather than

declared intention, must be held to be equally bound since in the law there is no distinction between agreements made by words and those made by conduct. * * *" (R. 111) (303 N. Y. 545, 560).

* * *

"* * * An agreement by conduct does not differ from an express agreement, except in the manner by which its existence is established" (R. 112) (303 N. Y. 545, 561).

* * *

"* * * It is elementary that there can be no agreement unless all of the parties involved intended to enter into one. Moreover, it is well-established contract law that in determining whether the parties possessed the necessary intention to contract, an objective test is generally to be applied. That means, simply, that the manifestation of a party's intention rather than the actual or real intention is ordinarily controlling. * * *" (R. 111) (303 N. Y. 545, 560, 561).

Consequently, it properly can be said that the construction by the Court of Appeals of a statute of its own State generally will be recognized as binding in this Court (*Standard Oil Co.* v. *New Jersey*, 341 U. S. 428, 432 [1951]; *Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64, 78 [1938]). However, it cannot be denied that the construction accorded the State statute by the Court of Appeals allowing its application in this case bears a rational relation to the facts and incontrovertibly is consistent with the Federal law and decisions. The *Heagney* case, *supra*, only need be mentioned as illustrative.

Workmen's compensation laws are to be liberally construed in furtherance of the purpose for which they were enacted and, if possible, so as to avoid incongruous or harsh results (*Baltimore & Philadelphia Steamboat Company* v. *Norton*, 284 U. S. 408, 414 [1932]).

It has been held that where a cause of action arises under an agreement or statute, the parties involved may by their actions, words or conduct enter into a compromise agreement to render and/or accept a substituted performance by the obligor in satisfaction of the original claim and that such a compromise agreement discharges the original cause of action (*Heagney* v. *Brooklyn Eastern District Terminal, supra; McCarney* v. *Scott*, 146 F. (2d) 624, 626 [1945]; *In re Plaza Music Co., Inc.*, 10 Fed. Supp. 310, 311 [1934], aff'd, 77 F. (2d) 1010 [1935]; *Ohlendiek* v. *Schuler*, 299 Fed. 182, 188 [1924], cert. den. 266 U. S. 608 [1924]; *Wyatt* v. *New York, O. & W. R. Co.*, 45 F. (2d) 705, 708 [1930], cert. den. 283 U. S. 829 [1930]; *In re Kellett Aircraft Corporation*, 173 F. (2d) 689, 692 [1949]; *Maryland Casualty Co.* v. *Cushing*, 171 F. (2d) 257, 258 [1948]; *Albert A. Moers* v. *Carrie C. Moers*, 229 N. Y. 294, 300, 301 [1920]).

The facts in the case at bar disclose a compromise agreement wherein mutual promises were clearly implied to render a substituted performance in satisfaction of the existing obligations, together with mutual promises to discharge the obligations in consideration thereof. The compromise agreement intended to and did discharge the original cause of action and a novation resulted. It seems entirely logical that the agreement of the appellant and the deceased to be bound by the terms of the Workmen's Compensation Law was an agreement in complete and full satisfaction of any existing rights and remedies under the Federal Act, substituting a definite statutory liability within fixed limits prescribed by the terms of the Workmen's Compensation Law.

Conclusion

The evidence and proof established as a matter of fact and law a fair, valid and full compromise agreement of settlement and release, and of waiver, of the Federal

rights and remedies under the Federal Employers' Liability Act within the provisions of both the State and Federal statutes and of the United States Constitution.

No provision of the Federal Employers' Liability Act forbade the application of Section 113 of the New York State Workmen's Compensation Law to this case and such application invaded no field exclusively reserved by the Federal Act.

The conduct and acts of the parties constituted an implied waiver with the same force and effect as an express waiver.

The Workmen's Compensation Board of New York State was vested with jurisdiction of the parties and of the subject matter, and the application of Section 113 of the Workmen's Compensation Law to this case violated no provision of the Federal Employers' Liability Act or of the Constitution of the United States and in no way interfered with the uniform operation of the Federal Act.

The order and judgment of the Court of Appeals should be affirmed.

Dated: New York, N. Y., December 3, 1952.

Respectfully submitted,

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